

Sarah J. Odia
Nevada Bar No. 11053
sjo@paynefears.com
PAYNE & FEARS LLP
6385 S. Rainbow Blvd., Suite 220
Las Vegas, Nevada 89118
Telephone: (702) 851-0300
Facsimile: (702) 851-0315

Attorneys for Defendants INTU
CORPORATION and DEANNA EDWARDS

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

KRYSTAL JOHNSON, on behalf of herself
and all others similarly situated, an individual;
ELIZABETH SPANGLER, on behalf of
herself and all others similarly situated, an
individual;

Plaintiffs,

v.

INTU, a Nevada corporation; DEANNA
EDWARDS, an individual,

Defendants.

Case No. 2:18-cv-02361-MMD-NJK

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION TO COMPEL
ANSWERS TO INTERROGATORIES
(ECF No. 66)**

Defendants INTU Corporation ("INTU") and Deanna Edwards (collectively
"Defendants"), by and through their counsel of record, hereby submit the following Memorandum
of Points and Authorities in Opposition to Plaintiffs' Motion to Compel Answer Interrogatories.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a wage and hour lawsuit filed by Plaintiffs who provided chair massages to casino
patrons pursuant to independent contractor agreements they entered with INTU. INTU asserts that
Plaintiffs were properly classified as independent contractors, while Plaintiffs assert that they were
employees of INTU under the Fair Labor Standards Act ("FLSA") and Nevada law. Plaintiffs
have also asserted a claim for Intentional Interference with Contractual Relations alleging that

1 Defendants interfered with Plaintiffs' contracts to furnish massages for Professional Massage, Inc.
2 ("PMI") at the Bellagio resort, by contacting the Bellagio *after* INTU's contract to provide
3 massage services at the Bellagio was terminated. (ECF No. 9 at ¶¶ 77 - 82).

4 Plaintiffs have moved to compel Defendants to respond to three of Plaintiffs'
5 Interrogatories, which seek the following information: (1) The date on which INTU learned that it
6 would not be contracted to perform massage services at the Bellagio (including the identification
7 of the Bellagio contact with whom it was discussed); (2) contact information for all persons
8 associated with the Bellagio and Aria casinos with whom INTU has communicated about the
9 performance of massage services at any time since December 12, 2015; and (3) all facts
10 supporting Defendants' affirmative defense that Plaintiffs have failed to mitigate their damages.
11 The first two categories of information are not relevant to Plaintiffs' claims, the Defendants'
12 defenses, nor are they proportional to the needs of the case. Furthermore, Plaintiffs are seeking
13 INTU's confidential and proprietary customer contact list, which is protected from disclosure. In
14 addition, Defendants have adequately responded to Plaintiffs' request for all facts supporting
15 Defendants' mitigation defense.

16 II. ARGUMENT

17 A. Legal Standards

18 FRCP 26 provides that parties may obtain discovery regarding "any nonprivileged matter
19 that is relevant to any party's claim or defense and proportional to the needs of the case,
20 considering the importance of the issues at stake in the action, the amount in controversy, the
21 parties' relative access to relevant information, the parties' resources, the importance of the
22 discovery in resolving the issues, and whether the burden or expense of the proposed discovery
23 outweighs its likely benefit." The Court "has authority to confine discovery to the claims and
24 defenses asserted in the pleadings," and parties "have no entitlement to discovery to develop new
25 claims or defenses that are not already identified in the pleadings." *See, Krause v. Nevada Mut.*
26 *Ins. Co.*, No. 2:12-CV-00342-JCM, 2014 WL 117572, at *3 (D. Nev. Jan. 10, 2014) quoting Adv.
27 Comm. Notes to 2000 Amendment to Rule 26(b)(1). "Though the line of demarcation between
28 what is relevant and what is not is difficult to define with precision, courts must regulate the

1 breadth of sweeping or contentious discovery.” *Id.* “While the standard of relevancy [in discovery]
 2 is a liberal one, it is not so liberal as to allow a party to ‘roam in the shadow zones of relevance
 3 and to explore matter which does not presently appear germane on the theory that it might
 4 conceivably become so.’” *Id.* quoting *Henderson v. Holiday CVS, LLC*, 269 F.R.D. 682, 686 (S.D.
 5 Fla 2010).

6 Generally, “the party seeking to compel discovery has the initial burden of establishing
 7 that a request satisfies the relevancy requirements of Rule 26(b)(1).” *Krause v. Nevada Mut. Ins.*
 8 *Co.*, 2014 WL 117572, at *3.

9 **B. Information Regarding the Expiration of INTU’s Contract with the Bellagio is**
 10 **not Relevant or Proportional**

11 Plaintiffs allege that information regarding when INTU was notified by Bellagio that its
 12 contract would not be renewed is relevant to Plaintiffs’ claim for Intentional Interference with
 13 Contractual Relations. It is not. To prove a claim for intentional interference of contractual
 14 relations, Plaintiffs must establish: (1) the existence of “a valid and existing contract; (2) the
 15 defendant’s knowledge of the contract; (3) intentional acts intended or designed to disrupt the
 16 contractual relationship; (4) actual disruption of the contract; and (5) resulting damage.” *J.J.*
 17 *Industries, LLC v. Bennett*, 71 P.3d 1264, 1267 (Nev. 2003). When INTU learned that it would not
 18 be contracted to perform massage services at the Bellagio, including the identification of who at
 19 Bellagio transmitted this information to INTU, is irrelevant to Plaintiffs’ Intentional Interference
 20 claim. Plaintiffs allege that they entered into contracts with PMI to perform massage services at
 21 the Bellagio, and that *after* INTU’s contract with the Bellagio expired, and that INTU interfered
 22 with the PMI contracts *after* its contract with the Bellagio expired. (*See*, ECF No. 9 at ¶¶ 49, 54,
 23 77-82). Prior to the expiration of INTU’s contract with the Bellagio on December 7, 2018, there
 24 was no “valid and existing contract” between the Plaintiffs and PMI to perform massage services
 25 at the Bellagio. Indeed, to support its claim for Intentional Interference, Plaintiffs allege “*when*
 26 *INTU’s contract with the Bellagio poker room expired*, it notified applicable casino management
 27 that [Plaintiffs] ... are subject to restrictive covenants.” (ECF No. 9 at ¶ 49). This is the only act
 28 alleged by Plaintiffs that allegedly interfered with their contracts with INTU. Thus, the timing and

1 substance of INTU's discussions with the Bellagio regarding the non-renewal of INTU's contract
2 for work at the Bellagio are wholly inapplicable to Plaintiffs' claim.

3 **C. Defendants' Client Contacts Are Not Relevant, Not Proportional and Are**
4 **Protected Trade Secrets**

5 Plaintiffs' Interrogatory No. 10 requests the contact information for INTU's client contacts
6 with the Bellagio and Aria casinos. This information is not relevant to any parties' claims or
7 defenses, nor is it proportional to the needs of this case. Liability under Plaintiffs' FLSA claim
8 will primarily hinge on whether INTU properly classified the Plaintiffs as "independent
9 contractors" rather than "employees." This determination depends upon a multi-factor test that
10 considers whether, "as a matter of economic reality, the individuals are dependent upon the
11 business to which they render service." *Donovan v. Sureway Cleaners*, 656 F. 2d 1368, 1370 (9th
12 Cir. 1981). The facts to be considered under the FLSA include:

13 (1) the degree of the alleged employer's right to control the manner in which the work
14 is to be performed; (2) the alleged employee's opportunity for profit or loss depending
15 upon his managerial skill; (3) the alleged employee's investment in equipment or
16 materials required for his task, or his employment of helpers; (4) whether the services
17 rendered require special skill; (5) the degree of permanence of the working
18 relationship; (6) whether the service rendered is an integral part of the alleged
19 employer's business; (7) ownership of the property or facilities when work occurred;
20 and (8) whether responsibility under the contracts between a labor contractor and
21 employer passes from one labor contractor to another without material changes.

22 *Torres-Lopez v. May*, 111 F.3d 633, 646 (9th Cir. 1997). This analysis focuses upon the
23 relationship between INTU and the Plaintiffs, and has nothing to do with INTU's customers. Thus,
24 INTU's customer's contact information is not relevant to Plaintiffs' claims.

25 Additionally, Defendants' customer contacts are proprietary and Defendants' should not
26 be forced to disclose such information. "[A] trade secret is 'any formula, pattern, device or
27 compilation of information which is used in one's business, and which gives [the owner] an
28 opportunity to obtain an advantage over competitors who do not know or use it.' " *N. Atl.*
Instruments, Inc. v. Haber, 188 F.3d 38, 44 (2d Cir. 1999) quoting Restatement of Torts § 757
cmt. b (1939). "A customer list developed by a business through substantial effort and kept in
confidence may be treated as a trade secret and protected at the owner's instance against disclosure

1 to a competitor, provided the information it contains is not otherwise readily ascertainable.” *N. Atl.*
 2 *Instruments, Inc. v. Haber*, 188 F.3d 38, 44 (2d Cir. 1999) citing *Defiance Button Mach. Co. v. C*
 3 *& C Metal Prods. Corp.*, 759 F.2d 1053, 1063 (2d Cir.), cert. denied, 474 U.S. 844, 106 S.Ct. 131,
 4 88 L.Ed.2d 108 (1985). Here, Defendants have worked for years to obtain contacts and develop
 5 relationships with individuals who work in the Las Vegas casino industry, in order to secure
 6 exclusive access to casino floors to perform massage services. (*See*, Declaration of Deanna
 7 Edwards at ¶ 2, attached hereto as Exhibit 1). As a service provider, Defendants’ customer
 8 contacts are one of INTU’s most valuable assets. (*Id.* at ¶ 3). These contacts were developed
 9 through substantial effort by Ms. Edwards and are not readily ascertainable to Defendants’
 10 competitors. (*Id.*) Defendants’ customer list and its contacts within the industry give Defendant an
 11 opportunity to obtain an advantage over competitors who do not have access to these contacts, and
 12 who have not worked to identify key individuals in the industry and develop relationships with
 13 them. (*Id.* at ¶ 4). Defendants should not be forced to make this information available to the
 14 Plaintiffs, who have admitted that they now work for Defendants’ competitors, and in some
 15 instances own their own massage businesses and could themselves become competitors of
 16 Defendants.

17 **D. Defendants Have Adequately Responded to Plaintiffs’ Interrogatory**
 18 **Regarding Mitigation**

19 Plaintiffs complain that Defendants have inadequately responded to Plaintiffs’
 20 Interrogatory No. 4 requesting “all facts” supporting Defendants’ affirmative defense that
 21 Plaintiffs have failed to mitigate their damages. Defendants’ responded that discovery is ongoing
 22 and that they believe that discovery will reveal facts showing Plaintiffs have failed to mitigate
 23 their damages by “failing to seek other opportunities for work, independent contracts, or
 24 employment as massage therapists.” At this point, Defendants are not able to point to more
 25 specific facts because: (1) Plaintiffs still have not produced copies of employment agreements or
 26 independent contract agreements that they entered for the calendar years 2016, 2017, and 2018,
 27 even though the Court compelled Plaintiffs to produce such documents by September 5, 2019
 28 (*See*, ECF No. 64); and (2) Defendants have not yet taken Plaintiffs depositions. Defendants will

1 supplement their response to Plaintiffs' Interrogatory No. 4 once Defendants receive the requested
2 documents that the Plaintiffs have been compelled to produce, and once Defendants have taken
3 Plaintiffs' depositions. It is unclear what, exactly the Plaintiffs are looking for. If the Plaintiffs
4 believe that Defendants' response is insufficient then perhaps Plaintiffs can rely upon this
5 discovery response if/when Defendants assert this affirmative defense in a motion before the
6 Court. However, Plaintiffs' Motion to Compel Defendants to further respond to this Interrogatory
7 is misplaced.

8 **IV. CONCLUSION**

9 For all of the foregoing reasons, Defendants respectfully request that this Honorable Court
10 deny Plaintiffs' Motion to Compel Plaintiffs to Answer Interrogatories.

11
12 DATED: September 17, 2019

PAYNE & FEARS LLP

13
14 By: /s/ Sarah J. Odia

15 SARAH J. ODIA, NV Bar # 11053
16 6385 S. Rainbow Blvd, Suite 220
17 Las Vegas, Nevada 89118
18 Telephone: (702) 851-0300
19 Attorneys for Defendants INTU CORPORATION
20 and DEANNA EDWARDS

21 **CERTIFICATE OF SERVICE**

22 I hereby certify that on September 17, 2019, service of the foregoing, **DEFENDANTS'**
23 **OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL ANSWERS TO**
24 **INTERROGATORIES (ECF No. 66)** was made this date on designated recipients by electronic
25 transmission through the court's CM/ECF program.

26 /s/ Erica Bennett-Mendoza
27 Erica Bennett-Mendoza

28 Opposition to Plaintiffs' Motion to Compel Interrogatories 4850-9006-1989 v. 1 (002).docx

EXHIBIT “1”

EXHIBIT “1”

Sarah J. Odia
Nevada Bar No. 11053
sjo@paynefears.com
PAYNE & FEARS LLP
6385 S. Rainbow Blvd., Suite 220
Las Vegas, Nevada 89118
Telephone: (702) 851-0300
Facsimile: (702) 851-0315

Attorneys for Defendants INTU
CORPORATION and DEANNA EDWARDS

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

KRYSTAL JOHNSON, on behalf of herself and
all others similarly situated, an individual;
SHANNON DELELLE, on behalf of herself and
all others similarly situated, an individual;
CRYSTAL HONECK, on behalf of herself and
all others similarly situated, an individual;
DUSTY DANGERFIELD, on behalf of herself
and all others similarly situated, an individual;
JENNIFER WAKUZAWA-KIDA, on behalf of
herself and all others similarly situated, an
individual; SARAH PASCOE, on behalf of
herself and all others similarly situated, an
individual; ELIZABETH SPANGLER, on
behalf of herself and all others similarly
situated, an individual; SHANNON
THOMPSON, on behalf of herself and all others
similarly situated, an individual;

Plaintiffs,

v.

INTU, a Nevada corporation; DEANNA
EDWARDS, an individual,

Defendants.

Case No. 2:18-cv-02361-MMD-NJK

**DECLARATION OF DEANNA
EDWARDS**

I, Deanna Edwards, declare as follows:

1. I am the owner and sole shareholder of INTU Corporation (“INTU”), a party to
this action. I have personal knowledge of the matters set forth herein.

2. I have worked for years to obtain contacts and develop relationships with individuals who work in the Las Vegas casino industry, in order to secure exclusive access to casino floors to perform massage services on behalf of INTU.

3. As a service provider, my customer contacts are one of the most valuable assets of my business, INTU. My customer contacts were developed through substantial effort and are not readily ascertainable to my competitors. I do not share my customer contacts with my independent contractors.

4. INTU's customer contacts within the industry give INTU an opportunity to obtain an advantage over competitors who do not have access to these contacts, and who have not worked to identify key individuals in the industry and develop relationships with them.

5. Disclosure of INTU's customer contacts at the Bellagio and Aria casinos would substantially harm INTU's business.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed September __, 2019, at Las Vegas, Nevada.

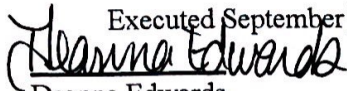
Deanna Edwards

4823-0008-2854.1

5. Disclosure of INTU's customer contacts at the Bellagio and Aria casinos would substantially harm INTU's business.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed September 17, 2019, at Las Vegas, Nevada.


Deanna Edwards

4823-0008-2854.1

Case No. 2:18-cv-02361-MMD-NJK

DECLARATION OF DEANNA EDWARDS